

REMARKS

Claims 1-48 are pending in the present application. No claims are added; claims 1, 10, 18, 22, 31, 39, and 41 are amended; claims 8, 9, 29, 30, 43, and 44 are cancelled. Reconsideration of the claims is respectfully requested.

I. 35 U.S.C. § 103, Obviousness

The Office Action rejects claims 1-48 under 35 U.S.C. § 103(a) as being unpatentable over Bodie (Bodie, Zvi, Kane, Alex & Marcus, Alan J. Investments. 3rd Edition. McGraw-Hill Companies. 1996) in view of Newsbytes ('Audible Objects' Have Virtual Reality Apps. Newsbytes. September, 25, 1992). This rejection is respectfully traversed.

Regarding Claim 1, the Office Action states:

Regarding Claim 1, Bodie discloses a method for determining the performance of an investment vehicle (one of many portfolios) within a plurality of investment vehicles (large investment fund) in a market, the method comprising the steps of:

- receiving a current performance indication (alpha) of the investment vehicle (one of many portfolios) within the plurality of investment vehicles (large investment fund). (see pp. 778-785).

Bodie does not teach a method for announcing performance of an investment vehicle, the method comprising the steps of:

- matching the current performance indication of the investment vehicle with a predetermined audible signature; and
- transmitting the predetermined audible signature based on results of the matching.

Newsbyte discloses a method comprising the steps of:

- matching the data with a predetermined audible signature (synthesized sound); and
- transmitting (broadcasting) the predetermined audible signature (synthesized sound) based on results of the matching (data/sound parameters). ("The data controls the parameters of the synthesized sound; as data values increase or decrease, sound characteristics such as pitch, brightness, or speed change accordingly. In one demonstration, various sounds represented stocks, bonds and other historical market data, creating an auditory 'picture' of four-and-a-half years of market ups and downs").

Neither Bodie nor Newsbyte teach that the determination of the current performance indication is automatic. However, it would have been obvious to one of ordinary skill in the art at the time the invention was made to have automated

the method, since it has been held that broadly providing a mechanical or automatic means to replace manual activity that accomplishes the same result involves only routine skill in the art. *In re Venner*, 120 USPQ 192.

It would have been obvious to one of ordinary skill in the art at the time the invention was made to have modified Bodie by incorporating an audible signature, as was done by Newsbyte, to allow those that were visually impaired to be able to ascertain the performance of their investment.

Office Action dated August 29, 2005, pages 2-4

The Examiner bears the burden of establishing a *prima facie* case of obviousness based on the prior art when rejecting claims under 35 U.S.C. § 103. *In re Fritch*, 972 F.2d 1260, 23 U.S.P.Q.2d 1780 (Fed. Cir. 1992). For an invention to be *prima facie* obvious, the prior art must teach or suggest all claim limitations. *In re Royka*, 490 F.2d 981, 180 USPQ 580 (CCPA 1974). Applicants submit that the combination of Bodie and Newsbytes fails to teach or suggest all of the features of the present invention. Independent claim 1, which is representative of independent claims 18, 22, 39, and 41 with regard to similarly recited material, recites:

1. A method for announcing performance of an investment vehicle within a plurality of investment vehicles in a market, the method comprising the steps of:
 - receiving a current performance indication of the investment vehicle within the plurality of investment vehicles;
 - matching the current performance indication of the investment vehicle to a predetermined audible signature, wherein the current performance indication of the investment vehicle is matched to a predetermined audible signature by analyzing and evaluating performance of the investment vehicle based on criteria for at least one of buying the investment vehicle or selling the investment vehicle; and
 - transmitting the predetermined audible signature based on results of the matching.

Applicants agree with the Examiner that Bodie does not teach “matching the current performance indication of the investment vehicle to a predetermined audible signature and transmitting the predetermined audible signature based on results of the matching.”

Newsbytes does not cure the deficiencies of Bodie. Claim 1 of the present invention recites the feature of matching the current performance indication of the investment vehicle to a predetermined audible signature, wherein the current performance indication of the investment vehicle is matched to a predetermined audible signature by analyzing and evaluating performance

of the investment vehicle based on criteria for at least one of buying the investment vehicle or selling the investment vehicle. Such a feature is not taught or suggested by Newsbytes. The Examiner points to following cited section of Newsbytes as teaching the feature of matching the current performance indication of the investment vehicle to a predetermined audible signature, matching the current performance indication of the investment vehicle to a predetermined audible signature, wherein the current performance indication of the investment vehicle is matched to a predetermined audible signature by analyzing and evaluating performance of the investment vehicle based on criteria for at least one of buying the investment vehicle or selling the investment vehicle:

The data controls the parameters of the synthesized sound; as data values increase or decrease, sound characteristics such as pitch, brightness, or speed change accordingly. In one demonstration, various sounds represented stocks, bonds, and other historical market data, creating an auditory "picture" of four-and-a-half years of market ups and downs.

("Audible Objects" Have Virtual Reality Apps. Newsbytes. September, 25, 1992.)

The above cited passage of Newsbytes teaches that sounds are used to represent stocks and that the pitch or tone of the sounds change as the stocks increase or decrease in value, creating an auditory "picture" of four-and-a-half years of market ups and downs. According to Newsbytes, sonification is the use of sound to display data. Newsbytes teaches sonification of historical market data. That is, a sound is assigned to a stock and as the historical data is read; the sound is altered based on a comparison between the previous data point and the current data point. Newsbytes teaches assigning a sound to a stock that has a starting value and altering that sound for each data point, relative to the previous data point. For example, as taught by Newsbytes, stock A is assigned the note A and has a starting value of \$5. The next historical data point shows a price of \$5.50, so the note A rises in pitch because \$5.50 is greater than \$5. The next data point shows a price for stock A of \$5.25, so now the note lowers in pitch because \$5.25 is less than \$5.50. Yet the \$5.25 is still higher than the original \$5; but there is no way of indicating this as Newsbytes only teaches raising and lowering the pitch as each data point changes.

In contradistinction, the present invention recites matching an investment vehicle to a predetermined audible signature based on criteria for either buying or selling the investment vehicle. The matching is based on the current data point only. That is, the current performance indication of the investment vehicle is evaluated, analyzed, and matched to a predetermined audible signature if the current performance indication of the investment vehicle matches criteria for either buying or selling the investment vehicle and then that predetermined audible signature is transmitted. Thus, when an investment vehicle reaches the criteria for either buying or selling, a predetermined audible signature is transmitted. Therefore, for example, in one exemplary implementation, the criteria for selling the investment vehicle could be set at an increase of 20% or more over a starting price of the stock. Therefore, if the current performance indication of the investment vehicle indicates an increase of 20% or more over the original price, the performance indication is matched to a predetermined audible signature of a drum roll, which is transmitted. Alternatively, a current performance indication for selling the investment vehicle may be set at a decrease of 20% or more below the original price. Therefore, if the current performance indication of the investment vehicle indicates a decrease of 20% or more below the original price, the performance indication is matched to a predetermined audible signature of a predetermined audible signature of a buzzer sound, which is then transmitted.

Thus, independent claim 1 is not obvious over Bodie in view of Newsbytes, as all the features of claim 1 are not taught by the references.

Furthermore, the Examiner admits that neither of the references teaches that the determination of the current performance indication is automatic. The Examiner alleges that *In re Venner*, 120 USPQ 192 renders the automation of the steps presented in claim 1 as trivial and obvious. However, following this reasoning would disallow patents for any sort of remote control device that replaces manual activity, such as television and other electronic remote controls or even CPUs and computers. This argument also fails to take into account the inherent intellectual and qualitative judgments being made regarding what data is to be gathered, filtered, and how that is announced to the user. As such, Applicants submit that the automation of the steps recited in claim 1 is not "obvious" and requiring only routine skill in the art.

In addition, the mere fact that a prior art reference can be readily modified does not make the modification obvious unless the prior art suggested the desirability of the modification. *In re Laskowski*, 871 F.2d 115, 10 U.S.P.Q.2d 1397 (Fed. Cir. 1989) and also see *In re Fritch*, 972

F.2d 1260, 23 U.S.P.Q.2d 1780 (Fed. Cir. 1992) and *In re Mills*, 916 F.2d 680, 16 U.S.P.Q.2d 1430 (Fed. Cir. 1993). An Office Action may not merely state that the modification would have been obvious to one of ordinary skill in the art without pointing out in the prior art a suggestion of the desirability of the proposed modification. Bodie teaches investment analysis, but does not teach or suggest the feature of matching the current performance indication of the investment vehicle to a predetermined audible signature and transmitting the predetermined audible signature based on results of the matching. Newsbytes teaches sonification of historical stock market data, but does not teach or suggest the feature of investment analysis or matching the current performance indication of the investment vehicle to a predetermined audible signature and transmitting the predetermined audible signature based on results of the matching. The Office Action provides no evidence from either reference of a teaching or suggestion to combine the investment vehicle analysis of Bodie with the sonification of historical stock market data of Newsbytes to receive a current performance indication of the investment vehicle; match the current performance indication of the investment vehicle to a predetermined audible signature; and transmit the predetermined audible signature based on results of the matching as in the presently claimed invention. One cannot use hindsight reconstruction to pick and choose among isolated disclosures in the prior art to deprecate the claimed invention. *In re Fritch*, 972 F.2d 1260, 23 U.S.P.Q.2d 1780, 1784 (Fed. Cir. 1992). Thus, without a showing of a teaching or suggestion from the prior art to combine the features from the two references, the Office Action has not met the initial burden of proving *prima facie* obviousness.

Therefore, for all the reasons set forth above, independent claims 1, 18, 22, 39 and 41 are patentable over the combination of Bodie in view of Newsbytes. Dependent claims 2-7, 10-17, 19-21, 23-28, 31-38, 40, 42 and 45-48 depend from independent claims 1, 18, 22, 39 and 41. As Applicants have already demonstrated claims 1, 18, 22, 39 and 41 to be patentable over the cited references, claims 2-7, 10-17, 19-21, 23-28, 31-38, 40, 42 and 45-48 are also allowable, at least by virtue of depending from an allowable claim.

Additionally, claims 2-7, 10-17, 19-21, 23-28, 31-38, 40, 42 and 45-48 recite other distinct features, not taught by the references. For example, claims 14, 35, and 45 recite the feature of "wherein the audible signature is a musical instrument digital interface (MIDI) standard." Claims 15, 36, and 46 recite the feature of "wherein the MIDI standard is a plurality of MIDI standards." The Office action points to Newsbytes as teaching both of these features.

However, Newsbytes, cited above, merely teaches the pure translation of numerical data to musical tones and pitches. Therefore, Newsbytes does not teach either the feature of wherein the audible signature is a musical instrument digital interface (MIDI) standard," or "wherein the MIDI standard is a plurality of MIDI standards." Therefore, claims 14, 15, 35, 36, 45 and 46 are not obvious over the combination of Bodie in view of Newsbytes, as the combination of the references fails to teach all the features recited in claims 14, 15, 35, 36, 45 and 46.

Claims 7 and 28 recite the feature of "wherein receiving a current performance indication of the investment vehicle within the plurality of investment vehicles is received by at least one of a buyer of the investment vehicle and a seller of the investment vehicle." The Office Action states that Bodie in view of Newsbytes teaches this combination of features. However, Newsbytes teaches analyzing historical stock market data and presenting a "picture" of historical market performance. A sound is associated with a stock and the sound changes as the price of the stock rises and lowers. Nothing in Newsbytes teaches or suggests that the current performance indicator of an investment vehicle is received by either a buyer or seller. Therefore, claims 7 and 28 are not obvious over the combination of Bodie in view of Newsbytes, as the combination of the references fails to teach all the features recited in claims 7 and 28.

Claims 10 and 31 recite the feature of "wherein criteria for buying the investment vehicle and criteria for selling the investment vehicle includes a target price of the investment vehicle." Thus, when a stock reaches the price for buying or selling, an audible signature is transmitted. The Office Action states that Bodie in view of Newsbytes teaches this combination of features. However, Newsbytes teaches that a sound is associated with a stock and the sound changes as the price of the stock rises and lowers. Newsbytes does not teach transmitting a predetermined audible signature when a stock or other investment vehicle reaches a certain price for buying or selling the stock. Therefore, claims 10 and 31 are not obvious over the combination of Bodie in view of Newsbytes, as the combination of the references fails to teach all the features recited in claims 10 and 31.

Therefore, the rejection of claims 1-48 under 35 U.S.C. § 103 has been overcome.

II. Conclusion

It is respectfully urged that the subject application is patentable over Bodie and Newsbytes, and is now in condition for allowance.

The Examiner is invited to call the undersigned at the below-listed telephone number if in the opinion of the Examiner such a telephone conference would expedite or aid the prosecution and examination of this application.

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Respectfully submitted,



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